



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable T. J. Crowe, Secretary  
Texas State Board of Medical Examiners  
918-19-20 Texas Bank Building  
Dallas, Texas

Dear Sir:

Opinion No. 0-5638

Re: Limitations on the Texas  
State Board of Medical  
Examiners, relative to  
the expenditure of funds  
collected under the pro-  
visions of the Texas Med-  
ical Practice Act.

Your request for our opinion on the hereinabove  
captioned matter has been received by this department. We  
quote from your letter as follows:

"On numerous occasions this office has been  
unable to effectively enforce the provisions of  
the Texas Medical Practice Act, for the reason  
that it has been contended by the Comptrollers  
office that the board is not allowed to submit  
for compensation amounts found necessary to devel-  
op admissible evidence in a case, as witness fees,  
photostats of evidence in the form of documents  
and other similar in connection with the trial of  
an offender, which means that on such occasions  
the expense incident to such prosecutions must  
be paid out of my personal funds, which in turn  
means that up to this time my personal losses  
have amounted to several hundred dollars.

"On several occasions I have taken up this  
matter with members of your office personnel, but  
without any definite solution of the problem, and  
I'd like to have it settled definitely, one way  
or the other, that I may in future know just how  
far I am justified by the provisions of the An-  
nual Registration Act to proceed in such cases.

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"I wrote the draft of the Registration Act, the funds derived from which are provided by the registered physicians of Texas for the purpose of enforcement of it; and although the provisions of the Act provide the board may spend up to the last penny in the fund for the purposes mentioned therein, but no tax shall ever be imposed on the funds of the state Treasurer collected for other purposes.

"The money was deposited with the state Treasurer, vouchers to be passed through the comptrollers office as a matter of safety, to prevent it being used for other than the purpose of enforcement of the law, the dissemination of information intended to educate the public &c, and for this service the state is paid between \$300. to \$500. a year.

"What I now desire to have your opinion on is what are the limitations of the board's use of this fund, now around \$20,000., if not for the actual sums needed in connection with the prosecution of flagrant violations of the Act? The Act itself defines the limit as the last cent in the fund, but no warrants shall be drawn on other funds of the state to compensate for a deficiency of the registration fund.

"Since I have some troublesome cases now on hand, I'll thank you for an early and a definite opinion on this matter."

Article 4498a, Vernon's Annotated Civil Statutes, reads in part as follows:

"Sec. 1. It shall be the duty of all persons now lawfully qualified and engaged in the practice of medicine in this State as defined in Article 4510, Revised Statutes of 1925, or who shall hereafter be licensed for such practice by the Texas State Board of Medical Examiners, to be registered as such practitioners with the Texas State

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Board of Medical Examiners, on or before the 1st day of January, A. D. 1932, and thereafter to register in like manner annually, on or before the 1st day of January of each succeeding year. Each person so registering with the Texas State Board of Medical Examiners shall pay, in connection with each annual registration and for the receipt hereinafter provided for, a fee of Two (\$2.00) Dollars, which fee shall accompany the application of every such person for such registration. Such payment shall be made to the Texas State Board of Medical Examiners. Every person so registering shall file with the Texas State Board of Medical Examiners a written application for annual registration, setting forth his full name, his age, his Post Office address, his place of residence, the county or counties in which his certificate entitling him to practice medicine has been registered, and the place or places where he is engaged in the practice of medicine, as well as the school of medicine to which he professes to belong and the number and date of his license certificate.

". . . .

"Sec. 3. All annual registration fees collected by the Texas State Board of Medical Examiners under this Act shall be placed in the State Treasury, to the credit of a special fund to be known as the 'Medical Registration Fund,' and all of the current revenues to be derived and placed to the credit of said fund during the two years ending August 31, 1933, are hereby appropriated and shall be used by the Texas State Board of Medical Examiners, and under its direction, in the enforcement of the laws of this State prohibiting the unlawful practice of medicine, and in the dissemination of information to prevent the violation of such laws and to aid in the prosecution of those who violate such laws. The Texas State Board of Medical Examiners shall be authorized to employ and to compensate from such special fund employees and such other persons as may be found necessary

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to assist the local prosecuting officers of any county in the enforcement of all the laws of the State prohibiting the unlawful practice of medicine, and to carry out the other purposes for which said fund is hereby appropriated. Provided that all such prosecutions shall be subject to the direction and control of the regularly and duly constituted officers, and nothing in this Act shall be construed as depriving them of any authority vested in them by law.

"In performing the duties devolved by this Act upon the Board of Medical Examiners, said Board shall act through the Secretary-Treasurer of the Board of Medical Examiners. The Secretary-Treasurer shall receive a salary to be fixed by the Legislature in its General Appropriation Bill for the performance of such duties under this Act, and shall make and file a surety bond in favor of the Texas State Board of Medical Examiners in the sum of not less than Ten Thousand (\$10,000.00) Dollars, conditioned that he will faithfully discharge the duties of his office. Such salary shall be paid out of said 'Medical Registration Fund' and shall not be, in any way, a charge upon the general revenue of the State. The Texas State Board of Medical Examiners shall employ and provide such clerks and employees as may be necessary to assist the Secretary-Treasurer in performing his duties and in carrying out the purposes of this Act; provided, that the compensation of all persons authorized to be employed under this chapter, shall be paid only out of said 'Medical Registration Fund.' All disbursements from said fund shall be made only upon written approval of the President and Secretary-Treasurer of the State Board of Medical Examiners and upon warrants drawn by the Comptroller to be paid out of said fund."

We quote from House Bill No. 666, Acts of the 46th Legislature, 1943, Regular Session, (which is the general appropriation bill for the executive and administrative departments of the State Government), as follows:

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"STATE BOARD OF MEDICAL EXAMINERS

"1. Secretary-Treasurer...	\$ 3,300.00	\$ 3,300.00
"2. Secretary-Steno- grapher.....	1,500.00	1,500.00
"2a. Stenographer.....	1,200.00	1,200.00
"3. Investigator.....	2,100.00	2,100.00
"3a. Investigator.....	2,100.00	2,100.00
"3b. Temporary Help.....	500.00	500.00
"4. Traveling Expenses, Secretary and Investi- gators (\$300 each quarter).....	3,600.00	3,600.00
"5. Miscellaneous, Rent, Printing of Directory of Registered Physi- cians in Texas, Tele- phone, Telegraph, Station- ery, Equipment and con- tingent expense (\$637.- 50 each quarter).....	2,550.00	2,550.00
"6. Bonds for Employees...	<u>100.00</u>	<u>100.00</u>
"Total	\$16,950.00	\$16,950.00

"Subject to the limitations set forth in the provisions appearing at the end of this Act, the foregoing amounts are appropriated out of the Medical Registration Fund as provided by Chapter 37, General Laws, 42nd Legislature, Regular Session, and any amendments thereto, and all balances on hand at the end of a preceding fiscal year and all fees and receipts thereafter accruing in said fund are appropriated for the payment of the above

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items, provided expenditures shall never exceed cash on hand. The sum of Three Hundred (\$300.00) Dollars each year is appropriated to the General Fund for reimbursement of the costs of governmental services rendered by other State agencies to said Board, and the Comptroller is ordered to transfer said amount each year."

This appropriation is for the two year period beginning September 1, 1943, and ending August 31, 1945.

Opinion No. O-4222-A, written by this department, reads in part as follows:

"Your attention is directed to the fact that the Constitution of the State of Texas prohibits money being withdrawn from the Treasury of the State except pursuant to appropriation made by the Legislature, and further provides that no appropriation shall be made for a longer period than two years. Constitution, Article VIII, Section 6. Under these provisions, it follows that where the Legislature has failed or refused to appropriate moneys for expenditure for particular purposes, the accounting offices of this State have no authority to issue warrants upon the Treasury in payment of expenditures made for such purposes."

In view of the foregoing, it is the opinion of this department that the Texas State Board of Medical Examiners can only make such expenditures out of the "Medical Registration Fund" as provided for by the above mentioned appropriation bill. The Legislature did not make an appropriation for the payment of the expenditures mentioned in your request, and therefore it is our opinion that the Texas State Board of Medical Examiners is not authorized to pay for photostatic copies of documentary evidence, witness fees, and other expenses of a similar nature.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JUN 23 1945

By

J. C. Davis  
J. C. Davis, Jr.  
Assistant  
APPROVED  
OPINION  
COMMITTEE

John